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Counsel for Plaintiff and the Proposed Class

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
ROCHESTER DIVISION

MICHAEL LEE, *on behalf of himself and all
others similarly situated,*

Plaintiff,

- against -

CANANDAIGUA NATIONAL BANK &
TRUST,

Defendant.

No. 6:20-cv-06332-EAW

**PLAINTIFF'S NOTICE OF
SUPPLEMENTAL AUTHORITY IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS PLAINTIFF'S
AMENDED CLASS ACTION
COMPLAINT**

Plaintiff Michael Lee respectfully submits this notice of supplemental authority to inform the Court of an additional recent order denying a motion to dismiss in a similar case, which was issued subsequent to the filing of Defendant's Reply in Further Support of Motion to Dismiss, ECF No. 17. In the case, the plaintiff challenged a "retry" insufficient funds ("NSF") fee identical to that at issue here.

In *Grice v. Independent Bank*, Case No. 7:20-cv-01948-JD (D.S.C. Mar. 26, 2021), ECF No. 39 (attached as **Exhibit A**), Judge Joseph Dawson, III held:

Given the record before the Court and the facts articulated herein, this Court does not agree that the Account Documents speak with the clarity Independent ascribes to them. Rather, they contain sufficient ambiguities which prevent dismissal at this stage. Grice offers a reasonable interpretation of the Account Documents, which plausibly supports her breach of contract claims. Moreover, she has plead sufficient facts to support a breach of good faith and fair dealing claim to survive a motion to dismiss.

Ex. A at 12.

Date: March 30, 2021

Respectfully submitted,

By: /s/ George V. Granade

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